IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 459 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJESH @ RAJU GILBARAT CHRISTIAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 459 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. By means of the present petition under Article 226 of the Constitution of India, the petitioner has

prayed for appropriate writ, order or direction for quashing and setting aside the order of externment dated 24.1.2002 passed by the Deputy Commissioner of Police, Zone : V, Ahmedabad city passed against the petitioner in exercise of powers under Section 56 of the Bombay Police Act (hereinafter referred to as the B.P.Act) R/w Sec.59 of the B.P.Act, as well as the order dated 12.6.2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar in an appeal under Sec.60 of the B.P.Act, confirming the order of externment dated 24.1.2002. Copy of the show cause notice issued to the petitioner along with aforesaid two impugned orders are produced by the petitioner in the present petition.

2. The petitioner has challenged the legality and validity of the order of externment on number of grounds. However, Mr. Prajapati, ld. counsel appearing for the petitioner has concentrated and restricted his arguments mainly on three grounds. The first ground is that the show cause notice (SCN for short) is vague in nature and on account of vagueness of the notice, it was not possible for the petitioner to make an effective representation or to file reply qua the allegations made in the latter part of the SCN and this infirmity goes to the root of the validity of the order of externment. The second point argued by ld. counsel Mr. Prajapati is that externing authority ought not to have considered the criminal cases registered against the petitioner for the offences punishable under the Bombay Prohibition Act because the same would not fall in the category of cases referred to in Section 56 of the B.P.Act and the act of considering the pendency of two prohibition cases has resulted into a serious prejudice, otherwise externing authority normally would not have issued even notice to show cause on registration of a solitary case. The third point argued by ld. counsel for the petitioner is that the order passed by the externing authority Annex.D is not a reasoned order and it should be termed as a non-speaking order because the evidence led by the petitioner in the capacity of the proposed externee has not been considered or evaluated by the authority and the same error has been committed by the appellate authority while dealing with the appeal under Section 60 of the B.P.Act. The order passed by the appellate authority is mechanical one and the same is without proper application of mind and, therefore, order of externment requires to be quashed and set aside. During the course of oral submissions, Mr. Prajapati has tendered a bunch of certified copies of the depositions of 11 witnesses recorded by the authority while dealing with the exeternment case against the petitioner in support of his

say. Said bunch is taken on record.

3. Ld. APP Mr. Kogje has submitted that the externing authority is not supposed to disclose the names of the witnesses whose statements have been recorded by the sponsoring machinery and there is no vagueness in the SCN served to the petitioner under Section 59 of the B.P.Act. The externing authority has assigned categoric reasons in the order under challenge that why the say of the witnesses examined by the petitioner is not found acceptable and that this is not the case wherein it can be held that the evidence led by the petitioner has been ignored without assigning any reasons. It is further submitted that some errors apparently found in the order passed by the appellate authority are not of substantive nature and this Court should ignore these errors. If number of witnesses examined are 11 and the appellate authority has stated in the order that 12 witnesses are examined, that would not make the order bad or illegal. This should be ignored treating as minor typographical error. As the petitioner was found involved in the offence punishable under Section 307 of the IPC and the authority has satisfied that the petitioner is a "dangerous person" and it is still likely that he may indulge in similar type of activities, then order of externment can be passed. Substantively these powers are to be exercised mainly on the subjective satisfaction arrived at objectively by the authority. So, according to ld. APP Mr. Kogje, there is no merit in the petition and, therefore, the same should be dismissed.

4. On evaluation of all the aspects brought before the Court, it is true that there is an element of vagueness in the notice to show cause. Consideration of irrelevant aspects namely registration of two prohibition cases by the externing authority would make the notice bad in law. Subjective satisfaction is arrived at for issuance of the notice is based mainly on three different aspects and registration of two prohibition cases is one of the these three aspects. On receipt of the written reply and the averments made in para-8 of the reply, keeping name and other details of the witnesses secret, statements of the witnesses could have been supplied to the petitioner especially when the contents of these statements have been considered and referred to by the authority. On careful perusal of the deposition of the witnesses recorded, it transpires that the petitioner at relevant point of time, was staying with his elder brother who is a rickshaw driver having six sisters in a family of 10 members. Practically, all the witnesses have consistently stated that the petitioner is a hawker

and selling onions and potatoes. If an angry young man because of social and economic situation misbehaves with somebody or commits criminal wrong or assault, then one or two such solitary acts would not make him a "dangerous person" required to be externed in exercise of the powers under Section 56 of the B.P.Act. On receipt of the written reply, the authority could have withdrawn SCN issued under Section 59 of the B.P.Act. However, at least after completion of evidence by the prosecuting agency and by the present petitioner, the authority ought not to have passed the order of externment. Notice to show cause can be withdrawn at any stage of the proceedings. In the order under challenge dated 24.1.2002, the authority has said that evidence led by the witnesses examined by the petitioner is not found acceptable as these witnesses are found interested in the result of the proceedings and the authority was convinced that they have stepped into the witness box only with a view to oblige the present petitioner. If the names and addresses of the witnesses examined by the petitioner are considered, they are found to be residents of the area where the petitioner is residing. During the cross-examination made by the Presiding Officer, all these witnesses have stood to the test. None of them is found close relative of the petitioner or caste fellows. Pointed questions were asked to these witnesses and none of them has been found to be involved in any criminal offence committed in the area or in the entire city of Ahmedabad. Evidence of all these witnesses ought not to have brushed aside by putting a single line branding them as "relatives, friends or otherwise interested in favour of the petitioner". So, the say of ld. counsel Mr. Prajapati is found acceptable that on this point, the order passed by the externing authority cannot be said to be a reasoned or speaking order. There should be a positive finding after evaluation of the evidence led by both the sides as to why evidence led by the prosecuting agency is found acceptable. It is true that the authority exercising powers under the B.P.Act is not a judicial authority, but is a quasi-judicial functionary and is supposed to consider the basic principles of jurisprudence and so also the principles of natural justice. The subjective satisfaction is sufficient in such cases, but the same should be arrived at objectively. In short, the order passed by the externing authority is found bad-in-law. Appellate Authority, at lest while exercising powers under Section 60 of the B.P.Act, could have quashed this order on all these grounds. Plain reading of the order passed by the appellate authority gives an impression that the same is passed in undue haste. The appellate authority at least

could have ignored the registration of two prohibition cases which is irrelevant aspect in view of the scheme of Section 56 of the B.P.Act. However, the mistake committed by the externing authority continued even before the appellate authority. Though there is no clear reference to four different unregistered criminal cases in the SCN as well as facts narrated whereby it can be inferred that the petitioner is a "dangerous person" or is a terror as an individual, the order of externment under challenge is passed. That passing of an order of externment is a harsh action by the State as it impairs free movement of the citizen. So, externing authority, if has passed the order in violation of the right flowing from Article 22(5) and 21 of the Constitution of India, then such an order of externment cannot sustain. Under these circumstances, on the grounds aforesaid, impugned order of externment requires to be quashed and set aside and consequently the order passed by the appellate authority also requires to be quashed and set aside. Hence, other grounds of challenge are not required to be discussed as the same are not pressed.

5. For the reasons aforesaid, this petition is allowed. The impugned order of externment dated 24.1.2002 passed by the Deputy Commissioner of Police, Zone : V, Ahmedabad City as well as order dated 12.6.2002 passed by the Deputy Secretary, Home Department, Sachivalaya, Gandhinagar confirming the order of externment dated 24.1.2002, are hereby quashed and set aside.

Rule is made absolute. Direct Service is permitted.

07.08.2002 [C. K. BUCH, J]
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